UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IBP, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CAUSE NO. 3:01-CV-362 PS
	)	
YEAGER & SULLIVAN, INC., MARIANNE ASH, CHARLES YEAGER, WILLIAM YEAGER, and TRISTAR LLC,	)	
	)	
Defendants.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On August 5, 2002, this Court entered partial summary judgment in favor of plaintiff IBP, Inc. and against defendant Yeager & Sullivan, Inc. ("Y&S") and awarded damages in the amount of $2,016,033.44 plus prejudgment interest. Y&S is evidently judgment proof, and through its complaint, IBP has sought to pierce the corporate veil and make Charles Yeager, William Yeager and Marianne Ash personally liable for the debts of Y&S.

A bench trial was held before this Court on that sole issue. For the reasons stated below, because IBP did not establish that any of the Defendants violated the corporate form justifying the piercing of the corporate veil, judgment is in favor of the individual Defendants and against IBP.

The following are the Courts findings of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52(a). To the extent certain findings of fact may be deemed to be conclusions of law, they shall also be considered the Court's conclusions of law. Similarly, to the extent matters contained in the conclusions of law may be deemed findings of fact, they shall also be considered the Court's factual findings.

FINDINGS OF FACT

Background of Yeager & Sullivan

Y&S was an integrated agriculture business that was initially incorporated in Indiana in 1958 and whose principal place of business was Camden, IN, a farming community in Carroll County, Indiana. Among other things, Y&S was involved in the manufacture of animal feeds and animal health products, warehousing and marketing grain, producing poultry and eggs, selling feeder pigs and raising hogs. (Feeder pigs are baby pigs; market hogs or "fat hogs" are the finished product that are sold to wholesalers like IBP). In addition, Y&S owned and operated a feed mill, an Indiana licensed grain storage facility, sold feed as a Wayne Distributor as well as supplies to local farmers.

Charles Yeager was President of Y&S and in the 1970's was joined in the business by his daughter, Marianne Ash, a veterinarian, and his son William Yeager. Y&S was owned evenly by Charles and Helen Yeager, Marianne Ash and William Yeager. For the years in question, the salaries paid by Y&S to Marianne Ash and Charles Yeager were fair and reasonable. In 1998 Charles Yeager was paid $37,000 by Y&S; he received no income from Y&S in 1999; and he received $27,000 in 2000. In the years 1998-2000, Marianne Ash was paid between $27,000 and $28,000 per year.

Facts Relating to the Agreement Between IBP and Y&S

In 1997, Y&S was adequately capitalized and expanded its hog production by entering into a feeder pig procurement contract with Continental Grain ("Conti"). Under that contract, Y&S would purchase feeder pigs annually at a set price of $48 per feeder pig. A feeder pig weighs roughly 40 pounds; a market hog weighs approximately 250 pounds. Hog farmers make

money so long as the cost of buying and raising the feeder pig is less than the market price for at hogs at the time of sale. The feed cost is one of the largest expense associated with raising hogs.

With the supply of feeder pigs from Conti in place, Charles Yeager started to look for a market hog buyer. Charles Yeager met with Steve Pederson, a hog procurement supervisor of the Plaintiff IBP. Charles Yeager wanted to meet Pederson to see if IBP was interested in arranging a deal whereby IBP would purchase the market hogs obtained from Conti and raised by Y&S. After the meeting, on April 6, 1998, a Hog Procurement Agreement (hereinafter the "Agreement") was entered into between Y&S and IBP.

The five year Agreement worked as follows: under the Agreement, Y&S would sell and deliver 30,000 hogs to IBP in 1998 and 2003, and in each of the years 1999 through 2002, Y&S would sell and deliver 60,000 hogs to IBP. (The Agreement started half way through1998 which accounts for why the agreement called for the delivery of only 30,000 hogs in 1998 and 2003.) The terms of the Agreement established a formula for determining the price for each delivery of hogs based on the then-current market prices. Boiled to its essence, the formula recognized two prices: the "market price," which was, as the name describes, the price for hogs being sold on the open market at the time; the second was the "floor price," which was the price necessary to cover expenses related to producing those hogs (i.e. the break even point for Y&S). In other words, if the market price of corn and bean meal increases, then the floor price under the contract would also go up because the cost of feed is the bulk of the expense in raising hogs.

Under the formula established in the Agreement, if IBP paid Y&S more than the market price for hogs, the excess amount paid (the difference between the price paid and the market price) would be placed into a reserve account. If, on the other hand, the market price was lower

than the floor price, then IBP paid Y&S the floor price, and the difference between those prices (the negative balance) was accrued in a deficiency account. Under the Agreement, the deficiency account was to be drawn from the reserve account when the reserve account had a positive balance; when the reserve account balance was reduced to zero, any deficiency amount was to be accrued in the deficiency account. In the event of a deficiency account balance, payments for hogs that exceed the floor price were to be subtracted from Y&S's checks and applied to the deficiency account until that account was reduced to zero. If there was no deficiency account balance, Y&S would receive the market price for the hogs, subject to reserve account deduction. The Agreement specifically provided for Y&S to repay IBP any amount (plus interest) in the deficiency account within ten days of termination of the contract.

Under the Agreement, in order to provide IBP protection if the deficiency account got too large, it was required that the fair market value of Y&S's net tangible assets (tangible assets minus liabilities) had to be larger than the amount in the deficiency account. Thus, at the time the Agreement was executed in 1998, Marianne Ash, on behalf of Y&S, completed a financial statement which showed that Y&S had assets of approximately $11.9 million and net tangible assets of approximately $3 million. The value of Y&S's assets as reflected on its tax returns was significantly less than $11.9 million. However, the value on the tax returns is the tax basis of the assets and thus is not a true reflection of the fair market value of the assets.

Importantly, the Agreement in question was between IBP and Y&S, not Y&S's shareholders. IBP did not demand, and none of the stockholders of Y&S provided, any personal guarantees to IBP. Accordingly, the debt belonged to Y&S and if the deficiency account got too large, it was for Y&S to repay, not the Y&S shareholders.

To prepare to perform under the Agreement, Y&S contracted with local farmers with finishing buildings to assist in raising the hogs. The agreements with local farmers were entered into so that Y&S could fulfill its obligations under the Agreement with IBP.

According to Marianne Ash, who the Court finds to be totally and completely credible, in the fall of 1998, the hog market fell precipitously and stayed there until about February 2000. Feeder pig prices went from $48 to $10. Though the market price for feeder pigs dropped dramatically, Y&S still had to pay $48 per feeder pig pursuant to its contract with Conti. The dramatic fall in the market caused hog prices to plummet to as low as $.08 a pound. Third party producers closed, and Y&S lost a substantial amount of money on grain sales. As a result, Y&S had many customer accounts that could not be collected. Further, Conti would not renegotiate the feeder pig price, local producers would not buy the Conti feeder pigs and due to the extremely low market price for market hogs, the IBP account became severely negative.

Given the dire situation and in an effort to continue to meet the IBP output requirement, Charles Yeager met with IBP and requested that IBP agree to accept hogs from Tri-Star LLC and from Ash and Yeager personally (in addition to hogs from Y&S). Tri-Star was owned by the same shareholders who owned Y&S. Ash testified credibly that Tri Star was formed because Y&S could not secure further loans because its lending institution (First of America) would not agree to take a second secured position to First Farmers Bank which had Y&S's hogs as its collateral. It was easier to obtain a second loan by forming a new company – Tri Star – which had its own set of hogs to use as collateral. Thus, First of America Bank agreed to loan monies to Tri-Star and Marianne Ash to expand their personal hog production but not to Y&S, since Y&S's hogs were already secured by First Farmers Bank.

In light of Y&S's financial problems, IBP agreed to allow Tri-Star (and Ash and Yeager personally) to sell to IBP hogs under the Agreement. Evidently, as long as the hogs were being produced and provided to IBP, IBP did not care where they were coming from. As a result, IBP wrote checks for hog sales directly to the specific entity or person who produced them. Thus, for example, if Marianne Ash produced the hogs from her personal hog producing business, IBP would pay Ash directly. As a result, in 1998 and 1999, Y&S was meeting its obligations (with help from Tri-Star, Ash and Yeager personally) under the Agreement. IBP never questioned if it should accept the hogs from Ash or Tri-Star, it simply accepted them content that the Agreement was being filled. In the meantime, the financial situation was dire for Y&S due to the deteriorating hog market and the poor contract it had with Conti. (Tri-Star and Ash were not burdened by the same lousy Conti contract.) Eventually, given the discrepancy between the market price for feeder pigs and the price that Y&S was actually paying Conti, Y&S defaulted on the contract with Conti.

In early 2000, Y&S settled with Conti to "buyout" the remaining term of the feeder pig contract by a loan from First Farmers Bank (backed by a FHA guaranty). Charles Yeager pledged his personal farm assets and Y&S secured all its assets, most of which were already secured for other Y&S loans. Unfortunately the hog market did not improve and Y&S determined it had to reduce secured debt. Y&S began to sell some real estate and assets to third parties at or near fair market value.

In February 2000, IBP's Pederson met with Marianne Ash and Charles Yeager. At the meeting, the current pig inventory was discussed and Pederson also addressed some rumors that the Y&S mill was for sale. Indeed, Y&S was liquidating assets to pay off creditors. As Y&S's

net assets declined, this placed IBP in a more vulnerable position given the rising level of the deficiency account established pursuant to the Hog Procurement Agreement. IBP was obviously concerned that Y&S would never be able to cover the deficiency that had accrued.

A second meeting was held on April 21, 2000. Present from Y&S were Charles Yeager and Marianne Ash. In attendance from IBP were Steve Pederson and Bob Hansen, both of whom were hog procurement people, as well as IBP's credit manager. At the meeting, Charles Yeager proposed the idea of Y&S selling off all of its assets. He estimated that after other bills were paid, Y&S would have approximately $1 million to pay IBP. If Y&S did so, Yeager inquired into whether IBP would be willing to write off the balance in the deficiency account. In response to Yeager's proposal a yes or no answer was not given, instead IBP "indicated that we would like to see the company [Y&S] remain in business and continue delivering hogs to IBP." (Ex. 34 at 3.) Perhaps recognizing that it made a mistake when it did not demand personal guarantees from the principles of Y&S at the time the Agreement was signed in 1998, at the April 21, 2000 meeting, IBP specifically requested personal guarantees from both Ash and Yeager.[1] They refused.

By June 2000, the deficiency account balance ballooned to $2,076,091 while Y&S's net tangible assets were worth less than $1.5 million. As a result, IBP asked that Y&S enter into a security agreement to protect IBP's interest. Although documents were forwarded to Yeager to sign, he never executed them.

[1] IBP's own internal documents show that none of the Y&S owners signed personal guarantees. (*See* Ex. 34 at 1; Ex. 71 at 5.)

On August 10, 2000, IBP vice-president Gary Machan wrote to Y&S informing the company that IBP considered Y&S's inability to secure the deficiency account balance a material breach of the parties' Hog Procurement Agreement. Machan notified Y&S that under the terms of the Agreement, Y&S had thirty days to cure the default or IBP would declare it in default and terminate the Agreement and demand immediate payment of the balance in the deficiency account. After Y&S failed to raise its net tangible assets, in January 2001, IBP terminated the

Agreement.

After suing Y&S for breach of contract, on August 5, 2002, Chief Judge Robert Miller granted summary judgment in favor of IBP and against Y&S and awarded IBP the sum of $2,016,033.44 plus prejudgment interest. (The case was subsequently transferred to the undersigned.) Through this action, IBP attempts to recover against Marianne Ash, Charles Ash and William Yeager personally by piercing the corporate veil and making those individuals liable for IBP's judgment against Y&S.

Facts Relating to the Adherence to the Corporate Form

Tri-Star, Marianne Ash and Y&S each maintained separate books and records and credited Y&S with any hog proceeds from IBP in excess of market price. Tri-Star and Marianne Ash purchased supplies, feed and some feeder pigs from Y&S at prices equal to those of other Y&S customers. To assure proper accounting, the Y&S accounting department reviewed each transaction between Marianne Ash, Tri-Star and Y&S in the same manner as other Y&S customers.

IBP's expert, Mike Strauch, a Certified Public Accountant, testified that he was given access to all of Y&S's accounting records and that he does not believe that any documents were withheld from him. According to Starauch, $37,000,000 of transactions occurred between Y&S, Tri-Star, Marianne Ash and Charles Yeager. However, there was no commingling of income and neither Ash nor Yeager derived any benefit from these transactions. In addition, for each transaction between Y&S and any of its shareholders, there was always an accounting trail to show the purpose of each transaction.

Y&S leased from Charles Yeager a feed mill and grain storage facility. There was no evidence produced by IBP regarding the value of the feed mill or what the fair market rent was. Marianne Ash testified that a written lease was signed but the lease was not found; that the leased facility was an integral part of Y&S's operations; that the rent was paid based on similar rents for other facilities; and the payments were made on a regular basis. Marianne Ash further explained that the rent paid in 1999 was less than that paid in 1998 because the leased facility was sold in September 1999. Thus, Y&S paid rent to Charles Yeager because Yeager personally owned the property that Y&S was leasing. Although there was no written lease introduced at trial, Ash testified – again quite credibly – that it did exist but that it could not be located. In any event, the rent payments were fair and reasonable and appeared to be arms lengths transactions between Y&S and Charles Yeager.

Y&S always adhered to the corporate form. Thirty years worth of meeting minutes for the corporation were produced in the case. In addition, Y&S had an accounting department that saw to it that adequate books and records were kept. The following are few examples of Y&S's adherence to the corporate form: minutes of annual meetings were prepared, as were minutes for

any special meetings of the corporation; all corporate reports required by the laws of the state of Indiana were duly filed; and federal and Indiana corporate tax returns were filed yearly for Y&S. In addition, Y&S had a corporate attorney that it consulted when the corporate officers had questions about adherence to the corporate form.

There were instances where personal debts of Charles Yeager were paid by the corporation. For example, supplies used personally by Charles Yeager and his home utility bills were paid for by the corporation. Y&S made an accounting transaction in its books that these payments were "loans" to Charles Yeager from the corporation. However, there was no underlying documentation to support what the terms of any such loans were.

In addition, Y&S paid for the payroll of Marianne Ash's separate business of Ashland Farms, a business in which Ash raised horses. In other words, Ash, for administrative convenience, used Y&S's payroll department to handle the payroll of Ashland Farms. However, the evidence showed that the very same day, Ash would repay to Y&S from her personal funds the amount of the payroll made to Ashland Farm employees. Thus, while it is true that Y&S received no benefit for providing this service, it is also clear that Ash repaid Y&S that very same day. As a result, all that Y&S lost was a bit of overhead expense (the expense associated with actually doing the payroll, which was modest).

There is also evidence that during harvest season one or two Y&S employees might also do some work for TriStar, Marianne Ash, or Charles Yeager personally. However, according to Richard Shuler, Y&S's bookkeeper, Marianne Ash or Charles Yeager were billed for the use of any equipment and for the labor of Y&S employees. These transactions were accounted for on the books for Y&S.

Y&S was not undercapitalized. Ash testified that in 1998 and 1999, Indiana issued to Y&S a license to operate a bonded grain warehouse after review of Y&S financial records. Prior to entering the Hog Procurement Agreement with IBP, Y&S provided IBP with tax returns and financial statements and IBP then entered into the Agreement. No evidence of under capitalization was introduced for 1998 and 1999. Although by the year 2000 Y&S became undercapitalized, this was due to the deteriorating hog market and the less than favorable contract with Conti that was saddling Y&S. Thus, by the time Y&S settled its contract dispute with Conti in 2000 it was undercapitalized, but by then the IBP deficiency account already had a large balance.

IBP contends that Y&S made itself judgment proof after IBP put Y&S on notice that it was in default under the Agreement. Y&S does not dispute that it sold real estate on July 3, 2000 to Hog Slats; on December 1, 2000 to Robeson; on December 15, 2000 to Abbott and Wise; and on May 3, 2001 to TDM, Inc. But Marianne Ash credibly testified that Y&S had to sell assets to reduce monthly mortgage payments it could no longer afford to make. In addition, the proceeds from the sale of these various properties were paid to various secured creditors.

In sum, as a result of the confluence of several events, Y&S was unable to make up the large balance in the deficiency account. Y&S suffered substantial losses in grain sales; the commodity market; loss occasioned by non-payment from its customers; and the drastic drop in the feeder pig market. These were all risks that Y&S was facing and that IBP should have been aware of based on the financial statements, tax returns, balance sheets and related documents provided to IBP before it signed the contract with Y&S. IBP is large and sophisticated agri-business corporation and should be able to assess the risk posed by its contracts.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Court hereby concludes as a Matter of Law:

The parties do not dispute that Indiana law applies to IBP's veil piercing claim. The Court also finds that Indiana law is the proper choice of law because the Agreement was performed exclusively in Indiana, all relevant or nearly all relevant acts occurred in Indiana, and Indiana is the location of the Agreement's subject matter. *See Sheldon v. Munford, Inc.*, 660 F. Supp. 130, 134 (N.D. Ind. 1987) (discussing Indiana choice-of-law rule).

A fundamental principle of American corporate law is that corporate shareholders sustain liability for corporate acts only to the extent of their investment and they are not held personally liable for acts attributable to the corporation. This is because a corporation is a separate legal entity distinct from its shareholders. *Winkler v. V.G. Reed & Sons, Inc.*, 638 N.E. 2d 1228, 1232 (Ind. 1994). This so-called limited liability is critical to the American economy because it encourages entrepreneurs to invest their risk capital in fledgling ventures safe in the notion that their personal assets are secure. This general principle has been recognized in Indiana for over one hundred years. As the Indiana Supreme Court has stated: "This principle of limited liability of corporate shareholders has been the common law of Indiana at least since 1897." *Aronson v. Price,* 644 N.E.2d 864, 867 (Ind. 1995).

Because of the importance of limited liability in spurring innovation, courts in Indiana are reluctant to disregard the corporate entity and hold shareholders personally responsible. *Winkler*, 638 N.E. 2d at1232. As the Seventh Circuit has stated in a case construing Indiana law: "The burden of proof falls on the party seeking to pierce the corporate veil to establish that the corporate form was so ignored, controlled or manipulated that it was merely the instrumentality

of another and that the misuse of the corporate form would constitute a fraud or promote injustice." *Nat'l Soffit & Escutcheons, Inc. v. Superior Sys., Inc.*, 98 F.3d 262, 265 (7th Cir. 1996) (citing *Aronson*, 644 N.E.2d. at 867).

The concept of piercing the corporate veil is an equitable doctrine, and the burden of proof is on the party seeking to pierce the veil. In deciding whether the plaintiff has met its burden of proof, the Indiana Supreme Court requires consideration of eight factors: (1) undercapitalization; (2) absence of corporate records; (3) fraudulent representation by corporation shareholders or directors; (4) use of the corporation to promote fraud, injustice or illegal activities; (5) payment by the corporation of individual obligations; (6) commingling of assets and affairs; (7) failure to observe required corporate formalities; or (8) other shareholder acts or conduct ignoring, controlling, or manipulating the corporate form. *Aronson*, 644 N.E.2d at 867; *Smith v. McLeod Distrib., Inc.*, 744 N.E.2d 459, 462 (Ind. Ct. App. 2000).

1. <u>Undercapitalization</u>

Inadequate capitalization means capitalization very small in relation to the nature of the business of the corporation and the risks attendant to such businesses. *Cmty. Care Centers, Inc. v. Hamilton*, 774 N.E.2d 559, 565 (Ind. Ct. App. 2002). Of particular importance to this case, the adequacy of capital is to be measured as of the time of the corporation's formation. *Id*. Thus, a corporation that was adequately capitalized when formed, but which subsequently suffers financial reverses is not "undercapitalized." *Id*. On the other hand, if an adequately capitalized corporation later substantially expands the size or nature of the business with an attendant substantial increase in business hazards, the corporation might be deemed inadequately capitalized unless there is an infusion of additional risk capital by shareholders. *Id.*

Consequently, while a trial court's examination of the adequacy of capitalization may inquire beyond the capitalization at the inception of the corporation, such inquiry is limited to those circumstances where the corporation distinctly changes the nature or magnitude of its business. *Id*.

In this case, Y&S has been a going concern for nearly 50 years. There is simply no evidence before the Court that Y&S was undercapitalized at the time it was formed. Moreover, Y&S was adequately capitalized at the time it signed the contract with IBP. While Y&S may have become undercapitalized, this occurred not because of any expansion of its existing business or because of any overt action taken by its shareholders. On the contrary, the undercapitalization was the clear result of a deteriorating hog market (as well as some of the markets like the feeder pig and grain markets associated with the hog market). All of these markets were the bread and butter of Y&S's business. When they fell to historic lows, it is not at all surprising that Y&S's financial condition fell apart with them. In sum, the first factor – undercapitalization – plainly militates against piercing the corporate veil.

2. <u>Absence of Corporate Records</u>

Under the Indiana Business Corporation Law (IBCL) a corporation must keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation. Ind. Code § 23-1-52-1 (a); *see also* 19 Paul J. Galanti, Indiana Practice – Business Organizations § 33.2 at 345-46 (1991) (highlighting the record keeping requirements of

Ind. Code § 23-1-52-1). A corporation must also maintain appropriate accounting records. Ind. Code § 23-1-52-1(b).

In this case, the evidence was clear that Y&S kept and maintained all necessary corporate records. It filed corporate tax returns; all filings required by the State of Indiana were duly made; minutes of corporate meetings were properly taken; annual meetings were conducted; when special meetings were held they were properly recorded; proper accounting procedures to adhere to the corporate form were in place; and the shareholders consulted with a corporate attorney to ensure that the corporate form was being followed. IBP presented no evidence that Y&S was not properly maintaining corporate records. Indeed, the evidence was to the contrary since IBP's own expert admitted that he was provided all the necessary records to do his analysis and that no records were withheld from him. Accordingly, this factor strongly militates against piercing the corporate veil.

3. <u>Fraudulent Representation by Corporation Shareholders</u>

A corporate officer who engages in fraud cannot claim that his actions were really the conduct of the corporation and that he should be shielded from personal liability. As the Indiana Court of Appeals has stated: "It is well-settled that a corporate officer cannot escape liability for fraud by claiming that he acted on behalf of the corporation when that corporate officer personally participated in the fraud." *Gable v. Curtis*, 673 N.E.2d 805, 809 (Ind. Ct. App. 1996).

IBP contends that Marianne Ash and Charles Yeager made fraudulent representations that Y&S was adequately capitalized. The evidence in this regard was scant. IBP presented evidence that in 1998 when the Agreement with Y&S was signed, IBP requested that Y&S complete a financial statement. In that statement, Ash reported that Y&S had approximately

$11.9 million in assets (and roughly $3 million in net tangible assets). To show that this number was false and fraudulent, IBP introduced Y&S tax returns. Those returns show that the assets of Y&S were actually much lower than $11.9 million. This discrepancy was supposed to be proof that Ash and Yeager (on behalf of Y&S) lied in the financial statement to IBP.

The comparison between the tax returns and the financial statements is inapt. Even IBP's expert admitted that the comparison was off base because the assets as reflected in the tax returns bore no relation to fair market value. Instead, the assets in the tax returns reflect their ***tax*** value after they have been depreciated over many years. Thus, it is not surprising that there was a large difference between the value of assets on the tax returns as opposed to the fair market value of those same assets.

In addition, there was nothing underhanded about the way in which Y&S fulfilled its obligations under the Agreement. Y&S was saddled with an extremely poor contract with Conti. It was forced to buy feeder pigs from Conti for an amount way in excess of the market price. Consequently, Y&S simply could not raise those pigs in a cost effective way. To avoid this problem, Yeager proposed that IBP agree to accept market hogs not only from Y&S but also from Marianne Ash and Charles Yeager personally, as well as from Tri-Star. IBP could have balked, but it chose not to; it readily agreed to the arrangement. There was nothing shady or underhanded (and certainly not fraudulent) about the way in which Y&S performed on the contract by having Ash and Yeager help fill the contract. Indeed, it was all done with IBP's express approval. In short, IBP wanted the flow of market hogs to continue. If that meant that Ash or Yeager (as opposed to Y&S) was the one producing them, this was evidently of no concern to IBP.

Moreover, it is clear to this Court that IBP always knew that they were dealing with a corporate entity and understood that, as such, they were exposed to some risk. IBP never bothered to ask for personal guarantees from Ash or Yeager when it signed the Agreement with Y&S. It was only once the hog market tanked and Y&S's financial position deteriorated that IBP asked for personal guarantees. Understandably, Yeager and Ash refused. In short, there is simply no evidence that Yeager or Ash in any way misled or defrauded IBP.

In the absence of any other evidence of fraud or misrepresentation, this factor does not militate in favor of piercing the corporate veil.

4. Use of the Corporation to Promote Fraud or Illegal Activities

The fourth factor – use of the corporation to promote fraud, injustice or illegal activities – is plainly inapplicable in this case. There was no evidence presented by IBP that Y&S was used to promote fraud, injustice or to do anything illegal. Once again, the preponderance of the evidence was to the contrary. The evidence adduced at trial established that Y&S was an agriculture business that was initially incorporated in Indiana in 1958. Among other things, Y&S was involved in the manufacture of animal feeds and animal health products, warehousing and marketing grain, producing poultry and eggs, selling feeder pigs and raising hogs. In addition, Y&S owned and operated a feed mill, an Indiana licensed grain storage facility, and sold feed and supplies to local farmers. Thus, while Y&S most certainly ran into unexpected financial difficulties, it was not due to anything nefarious or illegal. This factor again favors not piercing the corporate veil.

5. Payment by the Corporation of Individual Obligations

There was clearly credible evidence presented by IBP that Y&S made payments for certain personal obligations of Charles Yeager and Marianne Ash. It was not clear to the Court, however, what the exact extent of these payments were. While there was some evidence that these payments were actually loans to Charles Yeager, that evidence was not particularly persuasive. Thus, the Court finds that this factor militates in favor of piercing the corporate veil.

6. Commingling of Assets or Affairs

IBP presented very little evidence of any commingling of assets by Ash or Yeager with the assets of the corporation. In fact, Ash testified credibly that she was very careful to not commingle her personal funds with those of the corporation. For example, Ash's personal hog operation was totally separate from the operation of Y&S. She maintained a separate account on which only she had check writing authorization. By contrast, Y&S's account gave check writing authorization to Charles Yeager, William Yeager and Marianne Ash.

Moreover, Michael Powell, a certified public accountant who prepared Y&S's tax returns, testified credibly that Y&S and its shareholders went to extreme care to make sure that the corporate form was adhered to and that personal funds were not commingled with corporate funds. He would periodically do a random test of the transactions to assure that things were being done properly by Y&S and he opined that they were.

In the absence of clear evidence of commingling of assets, this factor militates against piercing the corporate veil.

7. Failure to Observe Corporate Formalities

The last factor overlaps with some of the other factors discussed above. To reiterate, however, there was no evidence that Y&S failed to adhere to corporate formalities. Indeed, the overwhelming evidence was to the contrary. The expert called by Y&S – Mike Powell – testified credibly that in his opinion Ash and Yeager were very careful about adhering to the corporate form. Other evidence corroborated this. For example, Y&S filed all the necessary reports with the state; it filed the appropriate federal and state tax returns; it kept accurate accounting records; it maintained minutes of meetings; and adhered to corporate formalities in other ways. Thus, the seventh factor clearly does not favor piercing the corporate veil.

CONCLUSION

In sum, under Indiana law we are instructed to be reluctant to pierce the corporate veil. IBP thus carries the burden to prove that this is one of the rare cases where the Court should use its equitable powers to hold the individual shareholders personally responsible for the debts of Y&S. We refuse to do so because, as explained above, almost every factor that this Court must consider militates against piercing the corporate veil.

For the reasons explained above, the Court finds that IBP, Inc. cannot obtain personal judgment against Marianne Ash, William Yeager, and Charles Yeager for the debts of Yeager & Sullivan, Inc. The clerk shall **ENTER FINAL JUDGMENT** in favor of Marianne Ash, William Yeager, and Charles Yeager. The clerk shall treat this civil action as **TERMINATED.**

SO ORDERED.

ENTERED: October 12, 2004

s/ Philip P. Simon
PHILIP P. SIMON, JUDGE
UNITED STATES DISTRICT COURT